

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000612-123

DATE: January 28, 2016

IN THE PRESENCE OF: THE HONOURABLE THOMAS M. DAVIS, J.S.C.

EMIL FOCSA
Petitioner

v.

DIAMOND PET FOODS INC.
and
SCHELL & KAMPETER, INC.
and
COSTCO WHOLESALE CORPORATION
and
COSTCO WHOLESALE CANADA LTD.
and
TRACTOR SUPPLY COMPANY
Respondents

JUDGMENT

Introduction

[1] On May 9, 2012, the Petitioner filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "Motion for Authorization") against the Respondents on behalf of the following class:

"All residents in Canada who purchased and/or whose pets consumed Pet Food

Products that were manufactured, distributed, sold, and/or placed onto the market by the Respondents and which were subsequently recalled on April 6, April 26, April 30, and May 4/5 of 2012 [as well as any future recall relating to the issue at present], or any other group to be determined by the Court;

Alternately (or as a subclass)

All residents in Quebec who purchased and/or whose pets consumed Pet Food Products that were manufactured, distributed, sold, and/or placed onto the market by the Respondents and which were subsequently recalled on April 6, April 26, April 30, and May 4/5 of 2012 [as well as any future recall relating to the issue at present], or any other group to be determined by the Court.”

[2] The Motion for Authorization alleged, *inter alia*, that the Respondents had initiated voluntary recalls of certain Pet Food Products due to Salmonella contamination, however, certain retail outlets did not have any reimbursement programs in place, leaving a significant portion of the public with no meaningful way of being refunded for the sale price paid.

[3] In addition, it was alleged that no program has been set up to compensate pet owners for the costs of various other types of economic damages, including health screening tests, related veterinary expenditures, and the possible sickness and/or death of their pet.

[4] On September 28, 2012, a parallel proceeding was instituted by the offices of Consumer Law Group (“CLG”) in the province of Ontario in *Potestio et al. v. Diamond Pet Foods Inc. et al.*, 12CV55608CP¹.

[5] After numerous without prejudice discussions and exchanges of information between counsel for the Parties, the Petitioner and the Respondents reached a national settlement agreement entered into as of July 21, 2015, and amended by agreement before the Court both to provide that the date for the fulfillment of the condition set out in clause 6 thereof shall be removed and to modify the description of Sub-Class I members in the Claim Form, Appendix VI, (the “Settlement Agreement”), to fully and finally settle all claims asserted in or related to the present class action (and the parallel Ontario class proceeding)

[6] The Settlement Agreement applies to the following class:

“All residents in Canada who purchased and/or whose pets consumed Pet Food Products that were manufactured, distributed, sold, and/or placed onto the market by the Respondents and which were subsequently recalled on April 6, April 26, April 30, and May 4/5 of 2012.”

¹ The Parties have agreed to apply to the Ontario Court for a consent order approving the discontinuance of the Ontario Action without costs, should this Court approve the Settlement Agreement, Exhibit R-1.

Excluded from the Class are all Persons who timely and validly request exclusion from the Class pursuant to the Pre-Approval Notice disseminated and published in accordance with the Pre-Approval Order.

Settlement

[7] The Petitioner and the Respondents have agreed to the terms of the Settlement Agreement, the whole subject to the approval of this Court, and without any admission of liability whatsoever by the Respondents and for the sole purpose of resolving the dispute between the parties.

[8] The following is a summary of the key terms of the Settlement Agreement. In the case of any discrepancy, the language of the agreement prevails:

A. Direct Compensation

- i. The Respondents shall deposit the Settlement Fund of \$460,000 into a trust account, out of which shall be paid:
 - (a) All Eligible Claims;
 - (b) All Claims Administration costs;
 - (c) The cost of the Notice Program;
 - (d) Class Counsel fees and disbursements in the amount of \$150,000.00 plus applicable taxes;
 - (e) Honoraria payments to the Petitioner and to the two (2) representative plaintiffs in Ontario in an amount of \$1,500.00 each (\$4,500.00 total) in consideration for the time and effort that they devoted to the case;
 - (f) Any percentage withheld according to law from payments to Quebec resident Class Members for the benefit of the *Fonds d'aide aux recours collectifs*; and
 - (g) Any other costs and expenses associated with the Settlement;
- ii. The Eligible Claims are divided into two (2) subclasses based on the nature of the relief that they are entitled to:
 - SUBCLASS I consists of Class Members:
 - a) Who purchased and did not return the Pet Food Products to the dealer or otherwise exchange the Products; and/or

- b) Who purchased the Pet Food Products and fed them to their pet(s), and who suffered economic loss in the form of veterinarian's bills and the cost of precautionary medication although the pet(s) did not in fact become sick;

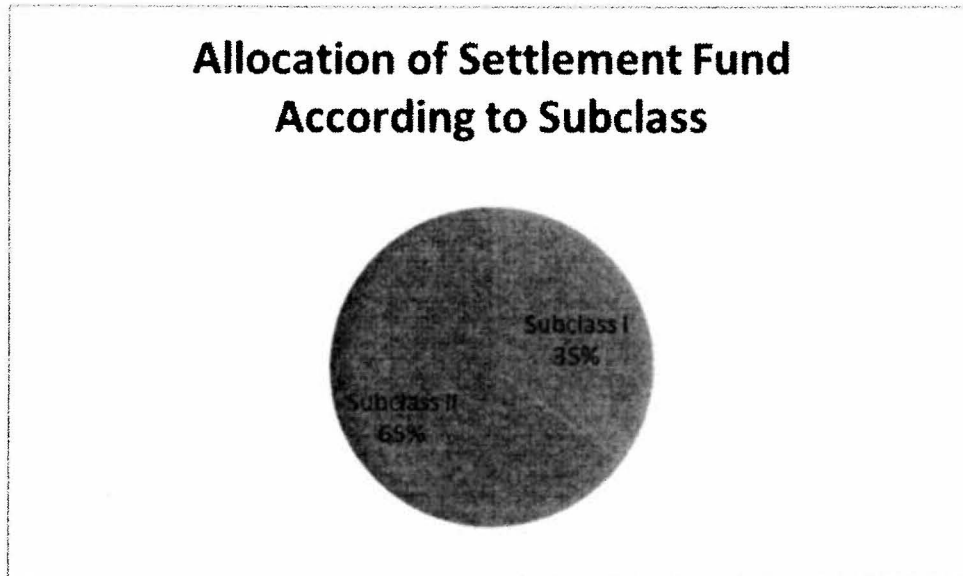
A Subclass I Member who submits an Eligible Claim shall receive one of the following:

- Reimbursement for bags of the Pet Food Product actually purchased, up to a maximum equal to the retail value of 2 bags of Pet Food Product per pet; or
 - If the Sub-Class I Fund is insufficient to pay all Eligible Claims, a *pro rata* share of the Sub-Class I Fund, calculated by using 1 as the numerator and the number of Eligible Claims submitted by Sub-Class I Members as the denominator;
- SUBCLASS II consists of Class Members who in addition to having purchased and/or used the Pet Food Products, sustained economic loss because of the injury, sickness or death of their pet(s) as a result of their ingestion of the Pet Food Products;

A Subclass II Member who submits an Eligible Claim shall receive one of the following:

- Reimbursement for bags of Pet Food Products actually purchased, up to a maximum equal to the retail value of 2 bags of Pet Food Products per pet, plus full reimbursement of the actual cost of veterinarian testing, care, and/or treatment of the pets in question, including the cost of medication, plus (but only where the pet died as a result of ingesting the Pet Food Products) the fair market of the pet in question; or
 - If the Sub-Class II Fund is insufficient to pay all Eligible Claims a *pro rata* share of the Sub-Class II Fund, calculated by using 1 as the numerator and the number of Eligible Claims submitted by all Sub-Class II Members as the denominator;
- iii. Subclass I claims shall be limited to 35% of the balance of the Settlement Fund after payment of all expenses outlined above ("the Net Fund Balance"). Any unclaimed balance in the Subclass I Fund at the end of the Claims Process shall revert and be reimbursed to the Respondents;
- iv. Subclass II claims shall be limited to 65% of the Net Fund Balance. Any unclaimed balance in the Subclass II Fund at the end of the Claims Process shall revert to and be reimbursed to the Respondents, up to a maximum of \$100,000. After the reversion amount has been attained, any

unclaimed balance remaining in the Subclass II Fund shall be paid by the Claims Administrator to a charity of Class Counsel's choice;



- B. Indirect Compensation: Respondent Schell & Kampeter, Inc. will employ for three (3) years from the date of the Courts' Approval new and improved quality control procedures and therapeutic reforms that had not been implemented prior to the placement of the Pet Food Products into the marketplace²;
- C. The release for the Respondents includes and encompasses any and all claims related to the allegations of the Quebec and/or Ontario Proceeding, the Products and/or the voluntary recall of the Pet Food Products by the Respondents, whether directly or indirectly;
- D. The Claims Administrator shall be Bruneau Group Inc. ("Bruneau Group"), whose function shall be to administer the claims process and the Settlement Fund and to receive the claims and issue the payments to Class Members;
- E. In order to submit a Claim, eligible Class Members need only complete and submit through the Settlement Website or by regular mail a timely Claim Form (Appendix VI to the Settlement Agreement), whereby the eligible Class Members must make a solemn declaration (not a sworn affidavit);
- F. The Claim Period runs until May 30, 2016 at the earliest (i.e. 120 days after the Courts' Approval);

² The Parties stipulate that compliance by Schell & Kampeter, Inc. with the terms of the settlement of the U.S. class actions approved by the Honourable Justice Feuerstein on October 30, 2014 shall constitute compliance.

G. The Opt-Out Deadline will expire 60 days after the Courts' Approval and can therefore not be before March 28, 2016; and

H. The deadline to object expired on January 13, 2016.

Class Notice

[9] In accordance with the Settlement Agreement and this Court's Judgment approving the Pre-Approval Notice as well as the Method of Dissemination, notice was effected on December 18, 2015 in the following manner:

- (a) Once in English in a weekly edition of The Globe & Mail in the form of a 1/3 page advertisement;
- (b) Once in French in a weekly edition of La Presse in the form of a 1/3 page advertisement;
- (c) Posting on Class Counsel's website at www.clq.org; and
- (d) A settlement website was established at www.petfoodclaim.ca (the "Settlement Website") where the Pre-Approval Notice was posted.

[10] In addition:

- (a) Within 24 hours of obtaining the Courts' Approval, the Respondents shall issue a CNW News Release in a form substantially the same as Appendix III to the Settlement Agreement;
- (b) Within 10 days of obtaining the Courts' Approval, Costco (or the Claims Administrator on its behalf) shall e-mail all potential Class Members (i.e. Costco customers who purchased the Products from Costco) for whom Costco possesses e-mail address information in a form substantially the same as Appendix IV to the Settlement Agreement;
- (c) Where:
 - Costco does not possess an e-mail address for a potential Class Member, but possesses a mailing address for that person, or
 - Costco possesses both an e-mail address and a mailing address for the potential Class member, but the e-mail sent to that person is undeliverable

then Costco shall send a postcard to the person in question, by ordinary mail, in a form substantially the same as Appendix V to the Settlement Agreement. The mailing of all postcard notices shall be completed within 30 days after the e-mails are sent.

[11] All of the materials disseminated and made available to Class Members, as well as, any and all future information to be disseminated are in French and in English.

Authorization of the Class Action

[12] The Respondents consent to the authorization of the Motion for Authorization as a class proceeding for settlement purposes only, which consent shall be withdrawn should the Settlement Agreement not be approved by the Court.

[13] Where the Respondents consent to the authorization of a class action for settlement purposes only, the criteria set forth at article 575 C.C.P. must still be met, albeit they are somewhat attenuated³.

[14] In light of this relaxed standard and, under reserve of the rights of the Respondents, the Motion for Authorization dated May 9, 2012, the Exhibits in support thereof and the Affidavit of the Petitioner dated January 24, 2016 justify granting the Motion for Authorization.

[15] The claims of the members of the Class raise identical, similar or related issues of law or fact, namely:

- a) Did the Respondents place onto the market Pet Food Products that were contaminated with *Salmonella* bacteria?
- b) Did the Respondents take adequate precautions to make sure that their products were free of harmful contamination?
- c) Did the Respondents institute a proper refund and reimbursement program for those customers that had purchased their Pet Food Products?
- d) Were Class Members prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
- e) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?

[16] The facts alleged appear to justify the conclusions sought⁴.

[17] The composition of the group makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings because:

- a) The thousands of potential Class Members are widely dispersed geographically across Canada;

³ *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Schachter c. Toyota Canada inc.*, 2014 QCCS 802; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *Sonego c. Danone inc.*, 2013 QCCS 2616.

⁴ Articles 37, 41, 53, 54, 228, 253 and 272 of the *Consumer Protection Act*, CQLR c P-40.1 and articles 1375, 1407 and 1457 of the *Civil Code of Québec*, LRQ, c C-1991.

- b) Given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Respondents; and
- c) Individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and to the Court system.

[18] The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's labour.

[19] When a class is comprised of consumers, such as this one, who are not likely to bring suit on their own, a class action is the superior method for resolving the controversy.

[20] The Petitioner, who is requesting to obtain the status of representative, will fairly, properly and adequately protect and represent the interest of the Class Members since the Petitioner:

- a) Is a Class Member;
- b) Was instrumental in instituting this class action by discovering the recall of the Pet Food Products on the news, researching further on the internet, and engaging counsel with extensive experience in consumer class actions;
- c) Provided his attorneys with relevant information and instructed them to proceed with the present proceedings;
- d) Made sure that the Class Members would be kept up-to-date through his attorneys' website;
- e) Participated in the settlement negotiations and provided input to his attorneys, ultimately instructing his attorneys to sign the Settlement Agreement;
- f) Has a good understanding of what this class action is about and what the settlement provides to Class Members;
- g) Has eagerly performed his responsibilities as the representative of the Class and he will continue to do so insofar as the proposed settlement is concerned;
- h) Has always acted in the best interests of the Class Members; and
- i) Has not indicated any possible conflict of interest with the Class Members.

Settlement Approval

[21] The Court approves the Settlement Agreement as fair, reasonable and in the best interest of the Class Members based on its analysis of the following factors as set out by the relevant case law, namely:

- « ● les probabilités de succès du recours;
- l'importance et la nature de la preuve administrée;
- les termes et les conditions de la transaction;
- la recommandation des procureurs et leur expérience;
- le coût des dépenses futures et la durée probable du litige;
- la recommandation d'une tierce personne neutre, le cas échéant;
- le nombre et la nature des objections à la transaction;
- la bonne foi des parties;
- l'absence de collusion. »⁵

[22] These factors ought not be applied in a formulaic manner. Moreover, not all nine (9) factors need be satisfied. Instead, the Court should look at the totality of these factors in light of the specific circumstances involved.

[23] In particular, the Court finds that:

- i. The amount offered in Settlement is fair and adequate and worthy of approval;
- ii. The Settlement was reached by experienced, fully-informed counsel after arm's length negotiations;
- iii. It is beyond cavil that continued litigation in this class action would be complex, lengthy, and expensive, with no guarantee of recovery by the Class Members.
- iv. A trial on the merits would entail considerable expense, including numerous experts, thousands more hours of attorney time and, given the right to appeal, trial would not necessarily end the litigation. Even if the Class could recover a larger judgment after a trial, the additional delay through the appellate process would introduce yet more risks and would, in light of the time value of money, make future recoveries less valuable than this current recovery;

⁵ *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Option Consommateurs c. Union canadienne (L'), compagnie d'assurances*, 2013 QCCS 5505; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Conseil pour la protection des malades c. CHSLD Manoir Trinité*, 2014 QCCS 2280; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *Bouchard c. Abitibi-Consolidated Inc.*, (C.S.) Chicoutimi, dossier 150-06-000001-966, 15 juin 2004.

- v. Justice is best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action;
- vi. The settlement provides an immediate benefit to Class Members and avoids unnecessary expense and delay;
- vii. The absence of any objectors or requests for exclusion serves as evidence of the fairness of the Settlement;
- viii. The parties engaged in sufficient investigation and information exchanged to intelligently negotiate the terms of the Settlement;
- ix. The promises and commitments of the Parties under the terms of the Settlement Agreement constitute fair value;
- x. The benefits to Class Members are substantially similar to those provided for in a similar U.S. settlement agreement which was approved by the U.S. court⁶; and
- i. Class Counsel has extensive expertise in the area of class actions and who is most closely acquainted with the facts of the underlying litigation is recommending the Settlement;

Fee Approval

[24] The Court approves Class Counsel fees and disbursements as fair and reasonable based on its analysis of the following factors as set out in sections 7, 101, and 102 of the *Code of Professional Conduct of Lawyers*⁷, particularly with a view to the objectives of class proceedings (i.e. access to justice, judicial economy, behaviour modification) and the risks assumed by Class Counsel⁸.

[25] Section 102 of the *Code of Professional Conduct of Lawyers* states:

“102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services

⁶ *Marciano v. Schell & Kampeter, Inc. et al.*, Court File No. 2:12-cv-02708, U.S. District Court, Eastern District of New York, Preliminary Approval Order dated February 19, 2014 and Final Approval Order dated October 30, 2014.

⁷ RLRQ, c B-1, r. 3.1.

⁸ *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866.

- requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and
- (9) the disbursements, fees, commissions, rebates, extrajudicial costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.”

[26] In particular, the Court finds that the amount of fees awarded is fair and reasonable based on the following:

- i) The Respondents have agreed to pay Class Counsel's fees in the amount requested, as appears from the Settlement Agreement;
- ii) No Class Member has objected to Class Counsel's fees. The Pre-Approval Notice disseminated to Class Members specifically stated the amount of Class Counsel fees being requested;
- iii) The amount of Class Counsel fees is significantly below that which is provided for in the Mandate Agreement with the Petitioner and reflects a compromise arrived at by the parties;
- iv) Class Counsel fees, at present, represent a 1.02 times multiplier on the actual time incurred⁹;
- v) Class Counsel assumed all of the financial risks associated with initiating, financing, and maintaining the litigation. Class Counsel invested a substantial amount of time and money to prosecute this case without any guarantee of compensation or even the recovery of its disbursements since it began and would have received no compensation or reimbursements of its expenses had this case not had a successful outcome;
- vi) The action involves complex legal issues and, in the absence of a settlement, would involve lengthy proceedings with an uncertain resolution and possible appeals;
- vii) Class Counsel has proved its ability to adequately, vigorously, and competently prosecute this action and the favourable settlement is attributable to the hard work, determination, diligence, and reputation of Class Counsel, who developed, litigated, and successfully negotiated the Settlement to provide substantial relief to Class Members;

[27] This judgment is based upon the foregoing findings of fact and conclusions of law, which are supported by the substantial evidence presented by the parties hereto, all of which the Court has considered and is in the record.

⁹ *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432; *Sony BMG Musique (Canada) inc. c. Guilbert*, 2009 QCCA 231; *Sonego c. Danone inc.*, 2013 QCCS 2616.

POUR CES MOTIFS, LE TRIBUNAL :**WHEREFORE, THE COURT:**

[28] **ACCUEILLE** la présente requête;

[28] **GRANTS** the present motion;

[29] **ORDONNE** que, pour l'application de ce jugement, les définitions énoncées à la Convention de règlement, R-1, s'appliquent et y sont incorporées par renvoi;

[29] **ORDERS** that for the purposes of this judgment, the definitions contained in the Settlement Agreement, R-1, shall apply and are incorporated by reference;

[30] **AUTORISE** l'exercice de cette action collective contre les Intimées pour les fins d'un règlement hors cour seulement;

[30] **AUTHORIZES** the bringing of a class action against the Respondents for the purposes of settlement only;

[31] **ATTRIBUE** au requérant le statut de représentant du groupe ci-après décrit:

[31] **ASCRIBES** to the Petitioner the status of representative of the group herein described as:

«Tous résidents canadiens ayant acheté et/ou dont l'animal a ingéré des Produits Pet Food qui ont été produits, distribués, vendus et/ou mis en marché par les Intimées et qui ont subséquemment été rappelés les 6, 26 et 30 avril et le 4/5 mai 2012 »;

"All residents in Canada who purchased and/or whose pets consumed Pet Food Products that were manufactured, distributed, sold, and/or placed onto the market by the Respondents and which were subsequently recalled on April 6, April 26, April 30, and May 4/5 of 2012";

[32] **DÉCLARE** que la Convention de règlement, R-1 (incluant son préambule et ses Annexes) (ci-après « la Convention de règlement ») constitue une transaction au sens des articles 2631 et suivant du *Code civil du Québec*, obligeant toutes les parties et tous les Membres de l'action collective qui ne se sont pas exclus en temps opportun;

[32] **DECLARES** that the Settlement Agreement, R-1 (including its Preamble and its Schedules) (hereinafter "the Settlement Agreement") constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Class Members who have not excluded themselves in a timely manner;

[33] **DÉCLARE** que la Convention de règlement est valide, équitable et raisonnable, et qu'elle est dans le meilleur intérêt des Membres du Groupe, du Requéant et des Intimées;

[33] **DECLARES** that the Settlement Agreement is valid, fair, reasonable and in the best interest of the Class Members, the Petitioner and the Respondents;

[34] **APPROUVE** la Convention de règlement en accord avec l'article 590 du *Code de procédure civile*;

[34] **APPROVES** the Settlement Agreement in accordance with article 590 of the *Code of Civil Procedure* ;

[35] **DÉCLARE** que la Convention de règlement fait partie intégrale du présent jugement;

[35] **DECLARES** that the Settlement Agreement is an integral part of this judgment;

[36] **ORDONNE** aux parties et aux Membres du Groupe, sauf ceux exclus conformément à

[36] **ORDERS** the parties and the Class Members, with the exception of those who are

la Convention de règlement et au présent jugement, de se conformer aux termes et conditions de la Convention de règlement;

excluded in accordance with the terms and conditions of the Settlement Agreement and with this judgment, to abide by the terms and conditions of the Settlement Agreement;

[37] **APPROUVE** la forme et le contenu du Formulaire de réclamation et du Formulaire de demande d'exercice du droit d'exclusion, respectivement comme étant les Annexes VI et VII de la Convention de règlement;

[37] **APPROVES** the form and content of the Claim Form and Opt Out Form, respectively as Appendices VI and VII of the Settlement Agreement;

[38] **ORDONNE** que chaque Membre du Groupe qui désire s'exclure de la Convention de règlement et, par conséquent ne pas être lié, soit tenu d'agir conformément à la Convention de règlement et au Formulaire de demande d'exercice du droit d'exclusion (Annexe VII de la Convention de règlement);

[38] **ORDERS** that each Class Member who wishes to opt out of the Settlement Agreement and thus not be bound by it, must do so in conformity with the Settlement Agreement and the Opt-Out Form (Appendix VII of the Settlement Agreement);

[39] **APPROUVE** le calendrier relatif à l'administration de la Convention de règlement, à savoir :

[39] **APPROVES** the schedule regarding the administration of the Settlement Agreement, namely:

- a) L'échéance pour exercice du droit d'exclusion : 60 jours après les approbations des Cours; pas avant le 28 mars 2016;
- b) L'échéance pour transmettre une réclamation conforme à la Convention de règlement : 120 jours après les approbations des Cours; pas avant le 30 mai 2016;

- (a) The deadline for opting out of the Settlement Agreement: 60 days after the Courts' Approval; i.e. not before March 28, 2016;
- (b) The deadline to file a claim under the Settlement Agreement: 120 days after the Courts' Approval; i.e. not before May 30, 2016;

[40] **DÉCLARE** que pour être valides, les Formulaires de réclamation doivent être remplis et soumis de la manière prévue à la Convention de règlement;

[40] **DECLARES** that to be eligible, Claims Forms must be completed and submitted in the manner stipulated in the Settlement Agreement;

[41] **ORDONNE** que les prélèvements par le Fonds d'aide aux recours collectifs soient effectués et soient remis conformément à la *Loi sur le recours collectifs et le Règlement sur le pourcentage prélevé par le Fonds d'aide aux Recours collectifs*;

[41] **ORDERS** that the levies by the *Fonds d'aide aux recours collectifs* be collected and be remitted according to the *Loi sur le recours collectifs* and the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*;

[42] **ORDONNE** que Bruneau Group Inc. soit, par les présentes, nommé Administrateur des Réclamations aux fins du règlement;

[42] **ORDERS** that Bruneau Group Inc. is hereby appointed as Claims Administrator for the settlement;

[43] **ORDONNE** que soient versés au

[43] **ORDERS** that the Petitioner and the

requérant et les demandeurs Ontariens des honoraires de 1 500 \$ chacun en reconnaissance de leurs efforts dans la poursuite de l'action collective jusqu'au règlement;

Ontario Plaintiffs shall be paid an honorarium of \$1,500 each in recognition of their efforts in prosecuting the class action through settlement;

[44] **APPROUVE** le versement aux Procureurs du Groupe des honoraires extrajudiciaires et frais tel que prévu à la Convention de règlement;

[44] **APPROVES** the payment to Class Counsel of its extrajudicial fees and costs as provided for in the Settlement Agreement;

[45] **APPROUVE** la forme et le contenu de l'Avis, essentiellement comme il est reproduit aux Annexes III, IV, et V de la Convention de règlement;

[45] **APPROVES** the form and content of the Notice, substantially in the form as set forth in Appendices III, IV, and V to the Settlement Agreement;

[46] **ORDONNE** que l'Avis soit publié essentiellement en conformité avec la Convention de règlement dans la manière suivante :

[46] **ORDERS** that the Notice shall be disseminated substantially in accordance with the Settlement Agreement in the following manner:

- a) Dans les 24 heures de l'obtention de l'Approbation des Cours, les Intimées devront émettre un Communiqué de Presse CNW
- b) Dans les 10 jours de l'obtention de l'Approbation des Cours, Costco (ou l'Administrateur des Réclamations en son nom) devra envoyer un courriel à tous les Membres du Groupe potentiels (soit les clients de Costco ayant procédé à l'achat des Produits chez Costco) dont Costco possède les adresses courriel
- c) Dans les cas où :
 - Costco ne possède pas l'adresse courriel d'un Membre du Groupe potentiel, mais possède l'adresse postale de cette personne, ou
 - Costco possède l'adresse courriel et l'adresse postale d'un Membre du Groupe potentiel, mais que le courriel envoyé n'est livrable

- a) Within 24 hours of obtaining the Courts' Approval, the Respondents shall issue a CNW News Release
- b) Within 10 days of obtaining the Courts' Approval, Costco (or the Claims Administrator on its behalf) shall e-mail all potential Class Members (i.e. Costco customers who purchased the Products from Costco) for whom Costco possesses e-mail address information
- c) Where:
 - Costco does not possess an e-mail address for a potential Class Member, but possesses a mailing address for that person, or
 - Costco possesses both an e-mail address and a mailing address for the potential Class member, but the e-mail sent is undeliverable

alors Costco devra envoyer un avis postal à la personne en question, par courrier ordinaire. L'envoi de tous les avis sous devra être complété dans les 30 jours après l'envoi des courriels;

then Costco shall send a postcard to the person in question, by ordinary mail. The mailing of all postcard notices shall be completed within 30 days after the e-mails are sent;

[47] **DÉCLARE** que la forme de l'Avis constitue un avis juste et raisonnable pour toutes les personnes ayant droit d'être avisées de la Convention de règlement;

[47] **DECLARES** that the form and manner of Notice herein represents fair and reasonable notice to all persons entitled to notice of the Settlement Agreement;

[48] **ORDONNE** que les Intimés, conformément aux modalités de la Convention de règlement, paie les coûts associés à l'Avis approuvé aux présentes;

[48] **ORDERS** that the Respondents shall, in accordance with the terms of the Settlement Agreement, pay the costs associated with the Notice approved herein;

[49] **ORDONNE** qu'un exemplaire du présent jugement soit affiché sur le site web de l'Administrateur des Réclamations à www.petfoodclaim.ca;

[49] **ORDERS** that a copy of this Judgment shall be posted on Claims Administrator's website at www.petfoodclaim.ca;

[50] **DÉCLARE** que dans le cas de divergence entre les conclusions françaises et anglaises du jugement, la version française prévaudra;

[50] **DECLARES** that in the case of any discrepancy between the French and English conclusions of this Judgment, the French version will prevail;

[51] **DÉCLARE** que la version anglaise de la Convention de règlement constitue l'entente entre les parties et que dans l'éventualité d'un conflit quant à son interprétation ou son application, la version anglaise aura préséance sur la traduction française;

[51] **DECLARES** that the English version of the Settlement Agreement is the true agreement between the parties and shall prevail over the French translation in the event of any contradiction between the two;

[52] **RÉSERVE** le droit des parties de s'adresser au tribunal pour solutionner quelque différend que ce soit découlant de la Convention de règlement;

[52] **RESERVES** the right of parties to ask the Court to settle any dispute arising from the Settlement Agreement;

LE TOUT, sans frais.

THE WHOLE, without costs.


 THOMAS M. DAVIS, J.S.C.

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